

# Notice of Allowability

Application No.

10/055,415

Examiner

Shawna J. Shaw

Applicant(s)

TUKE, MICHAEL A.

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/2/04 and 7/22/04.
2. ☒ The allowed claim(s) is/are 1-12.
3. ☒ The drawings filed on 22 April 2002 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 07142004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Shawna J. Shaw  
Primary Examiner  
7/22/2004

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kurt F. James on 07/22/2004.

In the abstract:

On line 24, change ", *inter alia*," to –at least--

In the claims:

In claim 1 line 29, change "programmed" to –configured--

In claim 1 line 30, change ", *inter alia*," to –at least--

In claim 6 line 2, change the first occurrence of "a" to –the—

In claim 7 line 21, change "programmed" to –configured—

In claim 7 line 22, change ", *inter alia*," to –at least—

In claim 8 line 3, insert –on a patient—between "operation" and ",",

In claim 8 line 1, insert –product having instructions contained on a computer readable medium—between "program" and "for"

In claim 8 line 22, change "program being recorded on a recording medium and arranged" to —adapted to be instructed by the computer program product—

In claim 8 line 23, change ", *inter alia*," to —at least--

In claim 9 line 29, change "programmed" to —configured—

In claim 9 line 30, change ", *inter alia*," to —at least--

In claim 10 line 9, change "programmed" to —configured— and "to" to —for--

In claim 11 line 9, change "programmed" to —configured— and "to" to —for--

In claim 11 line 21, change "a group of spacers comprising" to —the group consisting of—

In claim 12 line 22, insert —with a tensor means—between "tension" and "to"


2. The following is an examiner's statement of reasons for allowance: Regarding claims 1-8, the examiner agrees with applicant's remarks filed 06/02/2004, in particular the remarks on pages 17 and 18 regarding the "tensor means" and equivalents thereof. New claim 9 incorporates previously indicated allowable subject matter. Regarding new claims 10 and 11, the prior art does not fairly teach or suggest at least one sensor for registering the three-dimensional position of a patient's tibia or femur during the course of a knee replacement operation where tension is applied to the ligaments of the patient's knee using a spacer placed between the tibia and femur as set forth by the present invention. New claim 12 has been amended to state that tension is applied with "tensor means" so as to be consistent with the rest of the claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawna J. Shaw whose telephone number is (703) 308-2985. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's interim supervisors, Angela Sykes and Brian Casler can be reached at (703) 308-2262 and (703) 308-3552, respectively. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shawna J. Shaw  
Primary Examiner  
Art Unit: 3737  
07/22/2004